

**When The FBI Knocks
Practical Tips for Responding to an Investigation**

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1. Training and Preparation are Key

Even if you think it unlikely that you will be visited by government investigators, you should plan for the possibility. Make sure your front desk and counter people know who to call if the government comes calling, and make sure there are back-ups if the first supervisor can't be reached. The supervisor should, in turn, contact counsel. Even if counsel can't be physically present, they can be on the telephone during the search. Train your frontline people to ask for a delay while a supervisor (or counsel) are on the way. Most of all make sure that no one consents or agrees to anything.

2. Warrant or Warrantless?

Do the agents come with a warrant, or do they want consent to talk or search? Agents without warrants are trained to be very insistent, but they should be politely but firmly resisted. Take their cards, tell them that counsel will be in touch, wish them a good day, but resist all efforts to force the start to a conversation. Consent may open doors that you do not intend to open and cause harm to the company's effort to organize a response to an investigation.

If the agents have a warrant, you are entitled to a copy. The warrant defines what the agents are searching for and where they may search. Whenever an agent visits and for whatever purpose, always make sure to check I.D.s and get business cards.

3. Employees at Search Site

If at all possible, send them home. Agents love to talk to employees while other agents conduct the search. Remove their targets of opportunity. Tell your employees that agents have arrived to conduct a search. Tell them that most employees will be sent home, while a few might be retained to assist in the search. Also, tell them that either at work or at home, agents may approach them. Employees should be told that it is their right to decline to talk to the agents—it's their choice. However, employees should be told that if they choose to talk to agents, the company will provide counsel at no expense to the employee.

Employees who are essential to the search should be identified and retained during the search. Also, if the warrant specifies that the agents can search individual computers or secured work areas, be sure that those are accessible before employees leave.

4. The Search—Do's and Don'ts

You should monitor the search and make notes of where agents go, what they take, and who they talk to, but under no circumstance should you argue with the agents or obstruct them. This is true even if they go outside the bounds set out in the warrant—make a note, tell them politely that you believe they've exceeded the scope of the warrant, but don't obstruct. If you decide to video the search, do so openly, and stop if told to do so by the agents.

Make your own inventory of what has been taken and try to have an agent sign the inventory. If an agent asks you to sign an inventory, only sign it to note that you have received it, unless you are absolutely convinced that the inventory is complete and accurate.

In a wide search, it is likely that the agents will take privileged materials, including e-mails between attorney and client, protected health information, and trade secrets. If you believe that such materials have been taken in the search, note that to the agents and ask that the materials in question be placed under seal until the privilege or other questions can be addressed.

5. After the Search

A search may be the first you've learned of an investigation, or it may come after months of defending against an investigation. Whenever you first learn of an investigation, take steps to preserve all documents and data. Also, hire outside counsel. Experienced outside counsel can help you navigate the pitfalls of the investigation, take charge of the myriad details, and also serve as a buffer between investigators, you, and the company.

Work with the government where you can, fight where you must, but realize that investigators and attorneys have enormous power. Try to build a positive working relationship with them when at all possible. Scorched earth and overt combat with the government is almost always a bad strategy.

Overall, be patient. Investigations can take years to resolve. But if you've prepared ahead, you will be ready when the first agent walks through your door and that will put you on the path to a positive resolution of any investigation.